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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,355	05/16/2001	Werner Lindenberger	4987	5840

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Shoemaker & Mattare  
Crystal Plaza Building  
2001 Jefferson Davis Highway Suite 1203  
PO Box 2286  
Arlington, VA 22202-0286

EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

6

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/786,355	LINDENBERGER ET AL.	
	Examiner	Art Unit	
	Marc A Patterson	1772	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 May 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152).
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 8 is rejected under 35 U.S.C. 101 because the claim is directed only to an intended use, rather than a method of using; it therefore fails to conform with current U.S. practice. The claim is not written as a method of using, and furthermore does not recite any specific steps which are consistent with a method of using.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'tube with a film material of plastic' is indefinite, as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'a tube comprising a plastic film.' The phrase 'which forms one face wall' is indefinite, as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'having a face wall.' The phrase 'being joined flat to another' is indefinite, as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'being joined to one another.' The phrase 'along two strip - shaped edge sections and along one strip - shaped edge section' is indefinite,

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as it is unclear if the same section is being claimed. For purposes of examination, it will be assumed that the same section is being claimed. The phrase 'and which has a sealable outlet connection piece' is indefinite, as it is unclear whether the connection piece is part of the shoulder. The phrase 'and a flange which is attached to the face wall' is indefinite, as it is unclear whether the flange is part of the shoulder. The phrase 'sealable outlet connection piece' is indefinite, because its meaning is unclear. For purposes of examination, the phrase will be assumed to mean a piece of the shoulder to which a cap is screwed on. The phrase 'preferably of polyolefin' is indefinite because it is unclear whether polyolefin is being claimed or not. For purposes of examination, it will be assumed that polyolefin is not being claimed. The phrase 'preferably of polyester' is indefinite because it is unclear whether polyester is being claimed or not. For purposes of examination, it will be assumed that polyester is not being claimed. The phrase 'which is at least 6.5% of the total width of the side walls, but in any case is at least 4 mm' is indefinite because it is unclear whether the percentage or width is being claimed. For purposes of examination, it will be assumed that the width is being claimed. The phrase 'in the area of the face wall' is indefinite because it is unclear what area is being claimed.

5. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term 'adjoin' is indefinite, as its meaning is unclear. The phrase 'middle areas' is also indefinite, as it is unclear what areas are being claimed.

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6. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term 'para – amide' is indefinite, as its meaning is unclear. For purposes of examination, the term will be assumed to mean 'polyamide.'

7. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 is directed to a process of making. However, a process claim must set forth a series of distinct steps which define the process, rather than set forth the process in narrative form.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 – 5 and 8 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gruenbacher et al (WO 96/19395).

With regard to Claims 1 and 8 – 9, Gruenbacher et al disclose a toothpaste tube comprising a plastic film (page 1, lines 10 – 20), the tube having two side walls (folds which are sealed; page 5, lines 21 – 28); the walls are adhered to one another along two strip – shaped edge sections (page 5, lines 21 – 28; Figure 1); the tube comprises a shoulder piece (shoulder, which

comprises a gusset panel, and which forms a face wall; page 4, lines 3 – 11) which is stiff compared to remainder of the tube (the V – shaped seals of the shoulder increase the structural rigidity of the tube; page 4, lines 3 – 11); a cap is screwed to the shoulder (page 6, lines 19 – 29); and a flange which is attached to a face wall (the V – shaped seal of the gusset panel; page 4, lines 3 – 11); the film material comprises a 75 micron thick inner seal layer (page 4, lines 29 – 37; page 5, lines 1 – 5) and a 20 micron thick outside layer (page 4, lines 29 – 37; page 5, lines 1 – 5); the strip – shaped edge sections have a width greater than 4 mm (the width is 0.125 to 0.375 inches; page 6, lines 1 – 12); the inner boundaries of the two side edge sections face one another (the tube is made from a web which is folded and sealed; page 5, lines 21 – 28) and are angled to the inside toward one another; the tube is tapered; page 4, lines 3 – 11).

With regard to Claim 2, the flange of the shoulder piece at the edges of the face wall has two bent clips (V – shaped seals; page 4, lines 3 – 11) which join the side walls (V – shaped seals; page 4, lines 3 – 11).

With regard to Claim 3, the inner seal consists of polyethylene (page 4, lines 29 – 37; page 5, lines 1 – 5).

With regard to Claim 4, the outside layer consists of polyethylene terephthalate (page 4, lines 29 – 37; page 5, lines 1 – 5).

With regard to Claim 5, between the inner seal layer and outer layer there is a barrier layer (page 4, lines 29 – 37; page 5, lines 1 – 5).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gruenbacher et al (WO 96/19395) in view of Komiya et al (U.S. Patent No. 5,612,106).

Gruenbacher et al disclose a toothpaste tube comprising a barrier layer as discussed above. The thickness of the barrier layer is 10 microns (page 4, lines 29 – 37; page 5, lines 1 – 5); Gruenbacher et al fail to disclose a barrier layer comprising aluminum.

Komiya et al teach that it is well known in the art to use aluminum as a barrier layer of a toothpaste tube, for the purpose of preventing deterioration due to oxidation (column 1, lines 18 – 32).

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a barrier layer comprising aluminum in Gruenbacher et al in order to prevent deterioration due to oxidation as taught by Komiya et al.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gruenbacher et al (WO 96/19395) in view of Holoubek et al (U.S. Patent No. 5,238,148).

Gruenbacher et al disclose a toothpaste tube comprising a barrier layer as discussed above. Gruenbacher et al fail to disclose a barrier layer comprising polyamide.

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Holoubek et al teach the use of polyamide (nylon; column 4, lines 13 – 26) as a barrier layer in a toothpaste tube, for the purpose of obtaining low gas permeability (column 4, lines 13 – 26).

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a barrier layer comprising polyamide in Gruenbacher et al in order to obtain low gas permeability as taught by Holoubek et al.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

8/12/02